

PREPARED BY AND RETURN TO:  
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**FIFTH MODIFICATION TO ADAMSON CREEK  
BINDING DEVELOPMENT AGREEMENT**

(RECREATION & OPEN SPACE SCHEDULE FOR  
PHASE ONE-A, ONE-B & ONE-C)

**THIS FIFTH MODIFICATION TO BINDING DEVELOPMENT AGREEMENT** ("Fifth Modification") is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the City of Cocoa, Florida, a Florida municipal corporation ("City") whose address is 65 Stone Street, Cocoa, Florida 32922 and D.R. Horton, Inc., a Delaware corporation authorized to conduct business in Florida ("Developer"), whose address is 1341 Horton Circle, Arlington, TX 76148.

**W I T N E S S E T H**

**WHEREAS**, Developer is the owner of the real property subject to that Binding Development Agreement ("Agreement") dated December 10, 2008, recorded in Brevard County Official Record Book 5903, Page 6559, as modified by that Modification to Binding Development Agreement ("Modification") dated June 21, 2010, recorded in Brevard County Official Record Book 6192, page 2697, and as further modified by that Second Modification to Binding Development Agreement, dated June 24, 2014, recorded in Brevard County Official Record Book 7156, Page 999, and as further modified by that Third Modification to Binding Development Agreement, dated November 30, 2018, recorded in Brevard County Official Record Book 8408, Page 1501, and as further modified by that Fourth Modification to Binding Development Agreement, dated June 7, 2019, recorded in Brevard County Official Record Book 8595, Page 1034, for the development of a total of \_\_\_\_\_ single family homes in Adamson Creek Phases One-A, One-B, and One-C and associated open space and recreational amenities for the entirety of Adamson Creek Phase 1 PUD ("the Project"), and; and

**WHEREAS**, the Agreement incorporated an initial schedule for the design and construction of the Project's various open space and recreational facilities, which was then revised by the Modification, the Second Modification, the Third Modification, and the Fourth Modification ("Proposed Amenity Schedule"); and

**WHEREAS**, the Developer desires to further modify the Proposed Amenity Schedule to further incorporate all of Adamson Creek Phase One-C, the boundaries of which have been expanded via City of Cocoa Ordinance \_\_\_\_-2020, and the new open space and amenity tracts included therein and adopted in the approved amendment to the Adamson Creek final development plan; and

**WHEREAS**, the proposed modifications to the Amenity Schedule were presented to the City Council at its September 23, 2020 City Council meeting, along with Ordinance \_\_\_\_-2020, which was duly noticed and publicly advertised, rezoning certain property and incorporating it into the Adamson Creek PUD and amending the final development plan for Adamson Creek Phase 1; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements set forth herein and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 **Recitals.** The foregoing recitals are hereby incorporated herein by reference and deemed a material part of this Fifth Modification.

2.0 **Modification of Agreement.** The City and Developer agree to the modified Amenity Schedule set forth in **Exhibit “A,”** attached hereto and fully incorporated herein by this reference, which shall replace and supersede in its entirety any previously approved and agreed-to schedule, provided that a revised performance guarantee is secured and filed with the City as provided in Section 3.0 below.

3.0 **Performance Guarantee.** Developer shall be responsible for securing and filing with the City a revised performance guarantee for the construction of the Project’s required open space and recreational facilities (“Amenities”) set forth in **Exhibit “A.”** The form of the performance guarantee shall consist of a performance bond issued by a surety licensed to do business in the State of Florida. The performance guarantee shall be subject to the approval of the City Attorney and the City’s engineer as to form and manner of execution. Subject to approval by the City’s engineer, the amount of the performance guarantee shall be equal to one hundred and ten percent (110%) of the amount of the Project engineer’s maximum estimate or alternative bid estimates for the uncompleted Amenities. The effective period of the performance guarantee shall be until the City has issued a written certificate of completion for the required Amenities. During the effective period of the performance guarantee, the City’s engineer may reduce the amount of the performance guarantee to account for improvements covered by the guarantee that have been issued a certificate of completion by the City’s engineer, subject to the form of release being approved by the City Attorney. The City shall fully release the performance guarantee upon Developer’s complete construction of the Amenities. Whenever Developer fails to construct the Amenities according to any approved development orders and/or the Amenity Schedule set forth in **Exhibit “A,”** the City may, upon written notice to the parties to the performance guarantee instrument, declare the performance guarantee to be in default and exercise the City’s rights thereunder, including attorney’s fees and costs expended by the City related to the default. Upon default, no further development orders or other approvals shall be granted for the Project until the City determines that adequate progress has been made toward the completion of the Amenities.

4.0 **Recordation.** Upon full execution by both parties hereto and upon the City’s receipt of the revised performance guarantee, this Fifth Modification shall be recorded in the

public records of Brevard County, Florida, and shall run with the land, which includes the entirety of the Adamson Creek Phase 1 (inclusive of Phases One-A, One-B, and One-C), which is legally described and incorporated herein by this reference in **Exhibit “B”**.

5.0 **Notice.** Whenever either party desires to give notice to the other, notice shall be sent by hand delivery or certified mail, return receipt requested, and shall be sent to:

**For the City:**

City Manager  
City of Cocoa  
65 Stone Street  
Cocoa, FL 32922

**For D.R. Horton, Inc.**

Keith Williams, Division President  
D.R. Horton, Inc.  
1430 Culver Drive, NE  
Palm Bay, FL 32907

with a copy to:

Charbel J. Barakat, Florida Regional Counsel  
D.R. Horton, Inc.  
12602 Telecom Drive  
Tampa, FL 33637

Either party may freely modify their respective contact person and address contained in this Paragraph by providing written notice of the modification to the other party. Any Notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; and if mailed, on the third business day after mailing.

6.0 **Miscellaneous.** All terms and conditions of the Agreement, Modification, Second Modification, Third Modification, Fourth Modification and any other development approvals by the City for the Project, which are not expressly and specifically modified by this Fifth Modification, shall continue to remain in full force and effect.

[ SIGNATURES ON PAGES TO FOLLOW ]

**IN WITNESS WHEREOF**, the parties have executed this Fifth Modification to Binding Development Agreement as of the date first above written.

ATTEST:

**CITY OF COCOA,**  
a Florida municipal corporation.

\_\_\_\_\_  
**Carie Shealy, City Clerk**

\_\_\_\_\_  
**Jake Williams, Jr., Mayor**

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020 by Jake Williams, Jr., as Mayor of the City of Cocoa, a Florida municipal corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

WITNESSES:

**D.R. HORTON, INC.,**  
a Delaware corporation.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of ( ) physical presence or ( ) online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ as \_\_\_\_\_ of D.R. Horton, Inc., a Delaware corporation,

\_\_\_\_ who is personally known to me or \_\_\_\_ who has produced \_\_\_\_\_ as  
identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**PROPOSED AMENITY SCHEDULE**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF ADAMSON CREEK PHASE ONE**